1. The State of Wisconsin is one of the States of the United States of America, and this action is brought on its behalf pursuant to resolutions adopted severally by the two houses of its legislature at the regular sesion thereof held in the year 1921.

2. The defendant, State of Illinois, is also one of the States of the United States of America, and the defendant, Sanitary District of Chicago, is a public corporation organized and existing under and by virtue of the laws of the said State of Illinois and is a citizen of said last named State.

3. This action is brought in the Supreme Court of the United States in the exercise of the original jurisdiction of said Court, on the ground that it is an action in equity relating to a controversy between two States of the United States and also between a State of the United States and a citizen of another State.

4. The State of Wisconsin has approximately 350 miles of shore line along Lake Michigan, and included in the said shore line are thirteen harbors with facilities for the loading and unloading of vessels navigating the said Lake Michigan and the other Great Lakes. The said harbors are as follows: Milwaukee, Manitowoc, Green Bay, Sheboygan Marinette, Racine, Kenosha, Port Washington, Kewaunee, Algoma and Sturgeon Bay. The total amount of freight received at and shipped from the said thirteen harbors during the year 1920, exclusive of freight received or shipped by carferry, was in excess of 6,400,000 tons.

5. The State of Illinois has approximately 60

miles of shore line along Lake Michigan, comprising the eastern boundary of the counties of Lake and Cook in said State. Up to the year 1900, a natural stream of water called the Chicago River flowed through said Lake and Cook counties, one branch in a northerly direction and the other in a southerly direction, and emptied into Lake Michigan at a point in the city of Chicago.

6. In the year 1889 the legislature of the State of Illinois enacted a statute entitled "An act to create sanitary districts and remove obstructions in the Des Plaines and Illinois Rivers", approved May 29th, 1889 and published in the Laws of Illinois for the year 1889 commencing at page 186; which act authorized the organization of public corporations to be known as sanitary districts, with power, among other things, to construct, maintain and operate drainage canals or channels for the disposal of drainage and sewage. By sections 23 and 24 of the said act, it was further provided as follows, to-wit:

> "Sec. 23. If any channel is constructed under the provisions hereof by means of which any of the waters of Lake Michigan shall be caused to pass into the Des Plaines or Illinois rivers, such channel shall be constructed of sufficient size and capacity to produce and maintain at all times a continuous flow of not less than 300,000 cubic feet of water per minute, and to be of a depth of not less than fourteen feet and a current not exceeding three miles per hour, and if any portion of any such channel shall be cut through a territory with a rocky stratum where such

rocky stratum is above a grade sufficient to produce a depth of water from Lake Michigan of not less than eighteen feet, such portion of said channel shall have double the flowing capacity above provided for, and a width of not less than one hundred and sixty feet at the bottom capable of producing a depth of not less than eighteen feet of water. If the population of the district drained into such channel shall be made and kept of such size and in such condition that it will produce and maintain at all times a continuous flow of not less than 20,000 cubic feet of water per minute for each 100,000 of the population of such district, at a current of not more than three miles per hour, and if at any time the general government shall improve the Des Plaines or Illinois rivers, so that the same shall be capable of receiving a flow of 600,000 cubic feet of water per minute, or more, from said channel, and shall provide for the payment of all damages which any extra flow above 300,000 cubic feet of water per minute from such channel may cause to private property so as to save harmless the said district from all liability therefrom, then such sanitary district shall within one year thereafter, enlarge the entire channel leading into said Des Plaines and Illinois rivers from said district to a sufficient size and capacity to produce and maintain a continuous flow throughout the same of not less than 600,000 cubic feet of water per minute with a current of not more than three miles per hour, and such channel shall be constructed upon such grade as to be capable of producing a depth of water not less than eighteen feet throughout said channel, and shall have a width of not less

than one hundred and sixty feet at the bottom. In case a channel is constructed in the Des Plaines river as contemplated in this section it shall be carried down the slope between Lockport and Joliet to the pool commonly known as the upper basin, of sufficient width and depth to carry off the water the channel shall bring down from above. The district costructing a channel to carry water from Lake Michigan of any amount authorized by this act may correct, modify and remove obstructions in the Des Plaines and Illinois rivers wherever it shall be necessary so to do to prevent overflow or damage along said river, and shall remove the dams at Henry and Copperas Creek in the Illinois river, before any water shall be turned into the said channel. * * *

"Sec. 24. When such channel shall be completed, and the water turned therein, to the amount of three hundred thousand cubic feet of water per minute, the same is hereby declared a navigable stream, and whenever the general government shall improve the Des Plaines and Illinois rivers, for navigation, to connect with this channel, said general government shall have full control over the same for navigation purposes, but not to interfere with its control for sanitary or drainage purposes."

7. In November and December of the year 1889, defendant, the Sanitary District of Chicago, was organized as a sanitary district under the act of 1889 hereinbefore referred to, and has since continuously existed as such sanitary district under the said act of 1889 and the acts amenda-

tory thereof and supplementary thereto. At the time of its organization said defendant district consisted of a territory about 185 square miles in area. By successive acts of the legislature of Illinois the area of said defendant district has been increased from time to time, and as your orator is informed and verily believes and therefore avers its area is now approximately 395 square miles, extending from the Illinois-Indiana State line on the south and east to the northerly boundary of Cook county on the north, with about 33 miles of frontage on Lake Michigan, and comprises the entire city of Chicago together with large areas of land to the south, west and north of said city.

8. On or about the 3rd day of September 1892, defendant Sanitary District of Chicago, acting as a subordinate agency of the defendant, State of Illinois, pursuant to the act of 1889 hereinbefore referred to, commenced the construction of a canal or channel commencing at a point in the west fork of the south branch of the Chicago river about 6 miles above the mouth of said river, and extending in a general westerly direction for a distance of about 32 miles to a point near the city of Joliet, Illinois. At its westerly terminus said canal was made to connect with the Des Plaines river, a stream flowing in a westerly and southwesterly direction and forming a tributary of the Illinois river, which latter river in turn flows in a westerly and southwesterly direction and forms a tributary of the Mississippi river.

9. In the construction of said canal it was at all times the plan of the defendant, State of Illinois, and the defendant, Sanitary District of Chicago, that the said canal should be used as a passage-way for the sewage of the territory comprising the Sanitary District of Chicago, to the end that such sewage might be carried down the said canal into the Des Plaines and Illinois rivers; and in order to accomplish the said purpose it was the intention of said defendants at and prior to the commencement of the construction of said canal to divert from Lake Michigan, and pass through the said canal, such amounts of water as might be deemed by said defendants to be necessary for the proper dilution of the said sewage and its propulsion through the canal and the Des Plaines and Illinois rivers. In pursuance of such intention, and prior to the completion of said canal, the legislature of the defendant State of Illinois enacted in the year 1895 an amendment to section 20 of the act of 1889 hereinbefore referred to, which amendment is published in the Laws of Illinois for the year 1895 commencing at page 168 thereof, and provides that any sanitary district organized under the provisions of the act of 1889 and maintaining a channel which causes the discharge of sewage into or through any river beyond the limits of such district, "shall, at the time any sewerage is turned into or through any such channel or channels, turn into such channel or channels not less than 20,000 cubic feet of water per minute for every 100,000 inhabitants of said

district, and shall thereafter maintain the flow of such quantity of water."

10. Upon the completion of the said canal, the defendant, Sanitary District of Chicago, in compliance with section 27 of the said act of 1889, applied to the Governor of the State of Illinois for authority to commence the use of said canal, and such authority was granted by the said governor on behalf of the defendant State of Illinois, and thereupon, on or about the second day of January, 1900, said defendant District commenced the diversion of water from Lake Michigan into the Chicago river, and thence into and through the said canal, in such amounts and at such velocity as to reverse the flow of the Chicago river and create a steady and uninterrupted flow of water, from said day down to the present time, from Lake Michigan through the Chicago river to the said canal, thence through the said canal to the Des Plaines river near Joliet, and thence down the Des Plaines and Illinois rivers to the Mississippi river.

11. The primary object and purpose of the act of 1889 hereinbefore referred to, as said act was construed by the highest court of the State of Illinois in the case of *People v. Nelson*, 133 Ill. 565, 27 N. E. 217, and *Beidler v. Sanitary District of Chicago*, 211 Ill. 628, 71 N. E. 1118, was to provide a method of disposing of the sewage of the city of Chicago and contiguous territory, and the canal constructed by the defendant district as hereinbefore described has been continuously used for such purpose since the month of January, 1900. By the terms of the act of 1895 referred to in

paragraph 9 hereof, defendant State of Illinois has undertaken to make it the legal duty of the defendant, Sanitary District of Chicago, to pass water through the said canal at the rate of 20,000 cubic feet per minute, or 333 1-3 cubic feet per second, for every 100,000 inhabitants of the territory composing the Sanitary District of Chicago. At the time of the passage of said act of 1895, and at all times since, it was well known to the legislature of the State of Illinois and to the officers of the defendant Sanitary District of Chicago, that the only source from which water in such quantities as required by said act could be obtained was by the diversion of water from Lake Michigan, and it was at all of said times the intention of said legislature that the duty which it sought to impose upon the defendant District by the said act of 1895 should be performed by means of such diversion. According to the census of 1920, the population of the Chicago Sanitary District was 2,963,000 in that year, and as your orator is informed and verily believes and therefore avers, the population of said district is now in excess of said number, so that the effect of the said act of 1895 is to direct the defendant, Sanitary District of Chicago, to divert water from Lake Michigan at the present time at the rate of not less than 9,876 cubic feet per second.

12. Subsequent to the opening of the said canal, and in the year 1903, the defendant, State of Illinois, by an act of its legislature approved May 14th, 1903, and published in the Laws of Illinois for the year 1903 commencing on page 113, under-

took to authorize the defendant, Sanitary District of Chicago, to construct and operate a plant for the generation of electrical energy by hydraulic power derived from the water passing from Lake Michigan through the said canal. The provisions of said act with reference to said subject are as follows, to-wit:

> "Sec. 5. That the said sanitary district of Chicago is hereby authorized to construct all such dams, water-wheels and other works north of the upper basin of the Illinois and Michigan Canal as may be necessary or appropriate to develop and render available the power arising from the water passing through its main channel and any auxiliary channels now, or hereafter, constructed by said district.
>
> "Sec. 6. That the power made available by the works constructed under the provisions of this act shall be converted into electrical energy, and shall be transmitted to the various cities, villages and towns within said sanitary district, or adjacent to the main channel of said sanitary district, and may be used in the lighting of said cities, villages and towns, or parts thereof, or for the operation of pumping plants or machinery used for municipal purposes or for public service, or may be disposed of to any other person or corporation, upon such terms and conditions as may be agreed to by the said sanitary district: *Provided, however,* that it shall be the duty of said sanitary district to utilize so much of said power as may be required for that purpose to operate the pumping stations, bridges and other machinery of said sanitary district."

13. Under and by virtue of the authority attempted to be conferred on the defendant District by the defendant State of Illinois in said act of 1903, said District constructed and placed in operation a hydro-electric power plant at Lockport, near the western terminus of the said canal, and has continuously operated the same since its completion in the month of November, 1907. The said power plant is capable of developing in excess of 36,000 horsepower of electrical energy and does in fact develop and generate, as your orator is informed and verily believes and therefore avers, in excess of 20,000 horsepower continuously throughout the year. The electrical energy thus generated is mainly transmitted to the city of Chicago and there sold for municipal and commercial purposes, and, as your orator is informed and verily believes and therefore avers, the operations of said plant since the year 1907 have produced many millions of dollars of gross revenue to the defendant Sanitary District of Chicago and have earned for the said District many millions of dollars of profits over and above the cost of operating the said plant, including proper allowances for depreciation and a reasonable return upon the investment therein.

14. Since the completion of said hydro-electric development near the western terminus of said canal, the object and purpose of the defendants in the operation of the said canal and in the diversion of water from Lake Michigan through the same has been and now is two-fold, to-wit: the disposition of the sewage of the defendant Sanitary

District of Chicago, and the generation and sale of electrical energy.

15. According to the reports of the engineers of the defendant, Sanitary District of Chicago, the yearly mean amount of water passing through the said canal at its westerly terminus, practically all of which is water diverted from Lake Michigan, is as follows for the years 1900 to 1917, inclusive:

Year	Cubic Feet per Second	Year	Cubic Feet per Second
1900	2,900	1909	2,766
1901	4,046	1910	3,458
1902	4,302	1911	6,445
1903	4,971	1912	6,424
1904	4,793	1913	7,191
1905	4,480	1914	7,105
1906	4,473	1915	6,971
1907	5,116	1916	7,325
1908	4,421	1917	7,786

—which figures, as your orator is informed and believes and therefore avers, are based on methods of calculation which result in very considerably underestimating the actual amounts of flow through the canal. Your orator is informed and verily believes and therefore avers that the actual mean diversion of water from Lake Michigan through said canal for the year 1917 was about 8,800 cubic feet per second, and that the mean annual flow through the canal during the years 1918, 1919, 1920 and 1921, and the mean monthly flow for the first four months of the year

1922, has been in excess of 8,800 cubic feet per second.

16. All of the water diverted from Lake Michigan by the defendants in the manner hereinbefore set forth is carried into the Mississippi valley and hence is permanently abstracted from the Great Lakes system. As the result of such diversion, the mean level of the water in Lakes Michigan, Huron, Erie and Ontario and in the various waterways connecting said lakes, and in the St. Lawrence River above tide-water, has been lowered not less than six inches below the level that would exist in said lakes and waterways in the absence of such diversion; and as the amount of diversion in cubic feet per second becomes greater, the amount of lowering of the level of said lakes and waterways increases in proportion.

17. At no time during the period of at least six years last past has it been necessary for the protection of the health of the people of defendant district, or for any other purpose, that the sewage of the Sanitary District of Chicago be disposed of by means of the said canal. On the contrary, it has been entirely feasible during all of said period, and is now feasible, for said District to adopt and use scientific methods of sewage disposal, such as are in practical and successful operation in many large cities throughout the world, which would involve no permanent diversion of water from Lake Michigan and no pollution of the waters of said lake.

18. The lowering of the level of Lake Michi-

gan, as described in paragraph 16 hereof, has seriously diminished the utility of the ports of Wisconsin located on said lake and enumerated in paragraph 4 hereof, in that it has reduced by at least six inches in each of said ports the draft of vessels which can be accommodated therein for loading and unloading. Over eighty per cent. of the tonnage of freight received at the said ports consists of coal which is shipped in from the eastern States and which, except for the amount consumed at the said ports themselves, is thence carried by rail to a large number of cities, villages and towns in the State of Wisconsin and in other states to the west of Wisconsin, and constitutes the principal source of supply of coal for the State of Wisconsin in its proprietary capacity, as owner of many public buildings and institutions, and for many thousands of individuals and industrial plants located in said State. The said coal is brought to the said ports in vessels of a type peculiar to the Great Lakes, known as bulk freighters, having an enormous carrying capacity and capable of being operated at very low rates of freight when loaded to maximum capacity; but for every inch of their normal draft which said vessels are unable to utilize, their cargo-carrying capacity is reduced by many tons, and the resulting increase in freight cost per ton becomes and is a burden upon the State of Wisconsin in its proprietary capacity and upon many thousands of the people of said state. The only method that lies within the power of said state to relieve itself and

its people of the said burden is by accepting the alternative burden of dredging its said harbors to a sufficient additional depth to offset the effect of defendants' acts; but such dredging if undertaken would necessitate the expenditure of large sums of money, not once only but year after year, on account of the constant tendency of the dredged lake bed to become filled in and restored to its natural level.

19. In addition to the Wisconsin ports hereinbefore enumerated, located on the shore of Lake Michigan, there are a large number of ports located on the shore of Lake Michigan in the States of Illinois, Indiana and Michigan, on Lake Huron in the State of Michigan and the Dominion of Canada, on Lake Erie in the States of Michigan, Ohio, Pennsylvania and New York and the Dominion of Canada, and on Lake Ontario in the State of New York and the Dominion of Canada. The lowering of the level of all of said lakes by the acts of defendants, as above set forth, has lessened the utility of all of the ports on the said lakes, and of the waterways connecting said lakes, in the same manner as hereinbefore described with reference to the Wisconsin ports on Lake Michigan, with the result that in the conduct of transportation between Wisconsin ports and the said ports in other States, the possible loading of vessels bound to or from such other ports is reduced by many tons, for each trip of each vessel to or from a port whose harbor is not deep enough to accommodate the maximum draft of such vessel, below the loading which would be possible if the levels of said

lakes had not been lowered by the acts of the defendants. Such lowering of the water levels in ports of other States and in the said connecting waterways affects not only the traffic between said States and the Lake Michigan ports of Wisconsin, but also the traffic between said States and the Wisconsin ports of Superior, Ashland and Washburn located on Lake Superior. The commerce between the three Wisconsin ports last named and the various ports on Lakes Michigan, Huron, Erie and Ontario amounts to many millions of tons each year, the principal commodities thus transported being iron ore, coal and grain. As your relator is informed and verily believes, the total annual loss due to the lowered carrying capacity of lake vessels and chargeable directly to the diversion of water by the defendants, amounts to many millions of dollars, and a large part of said loss falls upon the people of the State of Wisconsin and is widely distributed through all parts of said State.

20. In addition to lowering the levels of Lakes Michigan, Huron, Erie and Ontario in the manner hereinbefore set forth, the diversion of water by the defendants has seriously impaired the navigability of the Chicago River, a navigable waterway of the United States, by introducing into said river a current so swift as to make the navigation thereof exceedingly difficult and dangerous. Prior to the commencement of said diversion of water, the Chicago River constituted an inner harbor of great importance, handling between six and eight millions of tons of inbound and outbound freight each

year, a considerable portion of which constituted commerce between citizens of Wisconsin and citizens of Illinois; but since the commencement of said diversion, the commerce of said harbor has become reduced to less than one-third of the said tonnage, largely because of the difficulties of navigation resulting from the said diversion; and, in addition, certain portions of the Chicago river have become entirely closed up by reason of the said diversion and are no longer accessible to the commerce of the people of Wisconsin.

21. Prior to the construction of the said canal by the defendant Sanitary District of Chicago, the Chicago, Des Plaines and Illinois rivers constituted a navigable waterway of the United States extending from Lake Michigan on the east to the Mississippi river on the west. In the construction of the said canal, the defendant District modified and altered the said navigable waterway by diverting portions of the Des Plaines river from its original bed, and in the operation of said canal said defendant has further modified and rendered the said natural waterway practically inaccessible from Lake Michigan by causing the west fork of the south branch of the Chicago river, west of the commencement of said canal, to become filled up and useless. As a result of said acts of said defendant, the said canal has become in fact a substitute for the old navigable waterway hereinbefore referred to, and is now the only practicable means of navigation by water from Lake Michigan to the Mississippi river; but in spite of the fact that the defendants have thus destroyed and rendered use-

less a navigable waterway of the United States, said defendants have always expressly refused to concede that the canal thus substituted for the said waterway is itself a navigable waterway of the United States, and on the contrary the defendant State of Illinois, in section 24 of the act of 1889 quoted in paragraph 6 hereof, has undertaken to bar the government of the United States from all control or authority over the said canal until such time as said government shall comply with certain conditions therein named, and has undertaken to make the control and authority of said government, upon compliance with said conditions, subordinate to the uses of the said canal for sanitation and drainage purposes.

22. The amount of water necessary to permit the said canal to be operated for navigation purposes only, as your orator is informed and verily believes and therefore avers, does not at the present time exceed 500 cubic feet per second, and the amount of water which may in the future be required for the operation of said canal for navigation purposes only, if permitted to be operated for such purposes, will not exceed one thousand cubic feet per second, as your orator is informed and verily believes and therefore avers, even if the said canal should come to be utilized to the fullest extent to which it is physically capable of being used for the purposes of navigation.

23. Prior to the opening of the said canal, and on the 8th day of May, 1899, the Secretary of War of the United States, the Honorable Russell A. Alger, at the instance of the defendant, Sanitary

District of Chicago, issued a document purporting to authorize said defendant to open a channel connecting the Chicago River with the said canal and to cause the waters of the Chicago River to flow through the same, which document is in the following words and figures, to-wit:

"Whereas by section 10 of an act of Congress approved March 3, 1899, entitled 'An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes,' it is provided that it shall not be lawful to alter or modify the course, location, condition, or capacity of the channel of any navigable water of the United States unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same; and

"Whereas the sanitary district of Chicago, a municipal corporation organized under the laws of the State of Illinois, has constructed an artificial channel from Robey Street, Chicago, to Lockport, and has been heretofore granted permission by the Secretary of War to make certain improvements in the Chicago River for the purpose of correcting and regulating the cross section of the river so as to secure a flowage capacity of 300,000 cubic feet per minute with a velocity of 1¼ miles an hour, it being intended to connect the said artificial channel with the West Fork of the South Branch of Chicago River at Robey Street in the said city of Chicago; and

"Whereas the said sanitary district of Chicago has now applied to the Secretary of War for permission to divert the waters of the said

Chicago River and cause them to flow into the said artificial channel at Robey street, as aforesaid; and

"Whereas the said sanitary district of Chicago represents that such movable dams and sluice gates as are necessary to at all times secure absolute and complete control of the volume and velocity of flow through the Chicago River have been constructed;

"Now, therefore, the Chief of Engineers having consented thereto, this is to certify that the Secretary of War hereby gives permission to the said sanitary district of Chicago to open the channel constructed and cause the waters of Chicago River to flow into the same, subject to the following conditions:

"1. That it be distinctly understood that it is the intention of the Secretary of War to submit the questions connected with the work of the sanitary district of Chicago to Congress for consideration and final action, and that this permit shall be subject to such action as may be taken by Congress.

"2. That if at any time it becomes apparent that the current created by such drainage works in the South and Main Branches of Chicago River be unreasonably obstructive to navigation or injurious to property, the Secretary of War reserves the right to close said discharge through said channel or to modify it to such extent as may be demanded by navigation and property interests along said Chicago River and its South Branch.

"3. That the sanitary district of Chicago must assume all responsibility for damages to property and navigation interests by reason of the introduction of a current in Chicago River.

"Witness my hand this 8th day of May, 1899.

"R. A. Alger, Secretary of War.

"John M. Wilson,
"Brigadier General, Chief of
Engineers, United States Army."

On the 9th day of April, 1901, the Secretary of War of the United States, the Honorable Elihu Root, issued a document purporting to direct that the flow of water in the Chicago River be reduced to 200,000 cubic feet per minute, which document is in the following words and figures, to-wit:

"Whereas under date of May 8, 1899, the Secretary of War granted permission unto the sanitary district of Chicago to open the artificial channel from Robey street, Chicago, to Lockport and cause the waters of Chicago River to flow into the same upon the following condition, inter alia:

"'2. That if at any time it becomes apparent that the current created by such drainage works in the South and Main Branches of Chicago River be unreasonably obstructive to navigation or injurious to property, the Secretary of War reserves the right to close said discharge through said channel or to modify it to such extent as may be demanded by navigation and property interests along said Chicago River and its South Branch;'

"And whereas it is alleged by various commercial and navigation interests that the present discharge from the river into the drainage canal sometimes exceeds 300,000 cubic feet per minute, causing a velocity of nearly 3 miles per hour, which greatly endangers navigation in the present condition of the river;

"Now therefore this is to certify that the Secretary of War, upon the recommendation of the Chief of Engineers, hereby directs said sanitary district to regulate the discharge from the river into the drainage canal so that the maximum flow through the Chicago River and its South Branch shall not exceed 200,000 cubic feet per minute.

"Witness my hand this 9th day of April, 1901.

"Elihu Root, Secretary of War."

On the 23rd day of July, 1901, the Secretary of War, the Honorable Elihu Root, issued a document purporting to increase the permitted flow in the Chicago river during certain hours of the day to 300,000 cubic feet per minute, which document is in the following words and figures, to-wit:

"Office Chief of Engineers, U. S. Army.

"July 22, 1901.

"Respectfully returned to the Secretary of War.

"By an instrument dated April 9, 1901, the Secretary of War directed the sanitary district of Chicago to regulate the discharge from the Chicago River into the drainage canal so that the maximum flow through the Chicago River and its South Branch shall not exceed 200,000 feet per minute.

"The sanitary district now asks that this order be so amended as to permit an increase of the flow into the canal to 300,000 cubic feet per minute between 4 P. M. and 12 midnight, daily.

"It is the opinion of Major Willard, expressed in the accompanying letter of the 16th instant, that the request should be granted,

subject to revocation by the Secretary of War in case the increase be found dangerous to navigation.

"I concur in this opinion and recommend that the order of April 9, 1901, be modified accordingly.

"G. L. Gillespie,
"Brigadier-General, Chief of Engineers,
U. S. Army.

"War Department,
"July 23, 1901.

"Approved as recommended by the Chief of Engineers.

"E. Root, Secretary of War."

On the 5th day of December, 1901, the Assistant Secretary of War, the Honorable William Cary Sanger, issued a document purporting to change the permitted flow in the Chicago river to 250,000 cubic feet per minute throughout the day, which document is in the following words and figures, to-wit:

"Whereas under date of May 8, 1899, the Secretary of War granted permission unto the Sanitary District of Chicago to open the artificial channel from Robey Street, Chicago, to Lockport and cause the waters of Chicago River to flow into the same upon the following condition, inter alia:

"'2. That if at any time it becomes apparent that the current created by such drainage works in the South and Main Branches of Chicago River be unreasonably obstructive to navigation or injurious to property, the Secretary of War reserves the right to close said discharge through said channel or to

modify it to such extent as may be demanded by navigation and property interests along said Chicago River and its South Branch;'

"And whereas the Secretary of War subsequently directed said sanitary district of Chicago to regulate the discharge of water into the Chicago Drainage Canal so that the maximum flow through the Chicago River shall not exceed 200,000 cubic feet per minute from midnight to 4 p. m., nor 300,000 cubic feet per minute from 4 p. m., to midnight; and whereas said sanitary district of Chicago has applied to the Secretary of War for permission to increase the flow between midnight and 4 p. m. to 250,000 cubic feet per minute, and the Chief of Engineers has recommended that the increase applied for be granted, but that the rate of flow from 4 p. m. to midnight be reduced to 250,000 cubic feet per minute, so that the flow through the Chicago River shall not exceed 250,000 cubic feet per minute throughout the 24 hours of the day;

"Now therefore this is to certify that in accordance with the recommendation of the Chief of Engineers the Secretary of War hereby gives unto said sanitary district of Chicago permission to regulate said discharge so that the maximum flow through the Chicago river shall not exceed 250,000 cubic feet per minute throughout the 24 hours of the day upon the following conditions:

"1. That this permission shall be in lieu of the present authorized rates of flow as stated above.

"2. That the permission herein given shall be subject to such modification as in the opinion of the Secretary of War the public interests may from time to time require.

"3. That said sanitary district of Chicago shall be responsible for all damages inflicted upon navigation interests by reason of the increase in flow herein authorized.

"Witness my hand this 5th day of December, 1901.

"Wm. Cary Sanger,
"Assistant Secretary of War."

On the 17th day of January, 1903, the Assistant Secretary of War, the Honorable William Cary Sanger, issued a document purporting to change the permitted rate of flow in the Chicago River to 350,000 cubic feet per minute until March 31, 1903, which document is in the following words and figures, to-wit:

"Whereas under date of December 5, 1901, by an instrument supplementary to the original permission granted by the Secretary of War May 8, 1899, to the Sanitary District of Chicago to open the artificial channel from Robey Street, Chicago, to Lockport and cause the waters of the Chicago River to flow into the same, the Secretary of War, pursuant to authority reserved in said permission of May 8, 1899, gave permission to the Sanitary District of Chicago to regulate said discharge so that the maximum flow through the Chicago River shall not exceed 250,000 cubic feet per minute throughout the 24 hours of the day, upon the following conditions, inter alia:

"'That the permission herein given shall be subject to such modification as in the opinion of the Secretary of War the public interests may from time to time require;' and

"Whereas the said Sanitary District of Chicago has applied for permission to in-

crease the flow through the Chicago River from 250,000 cubic feet per minute to 350,000 cubic feet per minute during the closed season of navigation, in order to carry off the accumulations of sewage deposit which line the shores along said city;

"Now, therefore, this is to certify that, in accordance with the recommendation of the Chief of Engineers, the Secretary of War hereby gives unto said Sanitary District of Chicago permission to increase the flow through the Chicago River from 250,000 cubic feet per minute to 350,000 cubic feet per minute until the 31st day of March, 1903, after which date it shall be reduced to 250,000 cubic feet per minute, as now authorized, upon the following conditions:

"1. That the permission herein given shall be subject to such modification as in the opinion of the Secretary of War the public interests may from time to time require.

"2. That said Sanitary District of Chicago shall be responsible for all damages inflicted upon navigation interests by reason of the increase in flow herein authorized.

"Witness my hand this 17th day of January 1903.

"Wm. Cary Sanger,

"Assistant Secretary of War."

On the 30th day of June, 1910, the Acting Secretary of War, the Honorable Robert Shaw Oliver, issued a document purporting to authorize a modification in the method of passing water into the canal of the defendant District, the permitted amount of flow remaining the same as theretofore fixed by the Secretary of War; which document is in the following words and figures, to-wit:

"War Department,
"Washington, June 30, 1910.

"Sir:' Referring to your application of 27th instant on behalf of the board of trustees of the sanitary district of Chicago to open a channel from the Calumet River to its existing main channel so as to substitute two routes instead of one between Lake Michigan and its canal, I have the honor to advise you to the following effect:

"It appears from the records of the department that by an instrument executed May 8, 1899, the sanitary district of Chicago was given permission to connect its drainage canal with the south branch of the Chicago River at Robey Street, in the city of Chicago, and to divert the waters of Lake Michigan through the Chicago River into said canal subject to certain specified conditions designed to limit the amount of such diversion and in other ways to protect the public interests. The permission so granted was subsequently modified at various times and by an instrument executed December 5, 1901, the amount of flow was fixed at not exceeding 250,000 cubic feet per minute; equivalent to 4,167 cubic feet per second, which is the present rate allowed. At the time the original permit was given a connection with Calumet River was not mentioned, but if it had been it is probable that a connection with that river as well as with the Chicago River would have been allowed.

"So long as the water flow remains unchanged there seems to be no special objection to its extension to both rivers instead of confining it to a single one, especially since if

the new (Calumet) route be developed later to a navigable state the double route will be advantageous to navigation interests. Accordingly, in view of the favorable recommendation of the Chief of Engineers and of the consent thereto by the Attorney General, under the conditions hereinafter prescribed, the department here modifies the existing permission so as to allow the diversion of the already permitted water flow in such manner as to reach the sanitary district canal by way of the Calumet River and a connecting channel, as well as by way of its present route through the Chicago River, subject to all pertinent conditions of the existing permission and to other express conditions, as follows:

"*(a)* That it be distinctly understood that it is the intention of the Secretary of War to submit the questions connected with the work of the sanitary district of Chicago to Congress for consideration and final action, and that this permit shall be subject to such action as may be taken by Congress.

"*(b)* That if at any time it becomes apparent that the current created by such drainage work in the Calumet, as well as Chicago Rivers, be unreasonably obstructive to navigation or injurious to property, the Secretary of War reserves the right to close the discharge through said channels or rivers, or to modify it to such an extent as may be demanded by navigation and property interests along said rivers.

"*(c)* That the sanitary district of Chicago must assume all responsibility for damages to property and navigation interests by rea-

son of the introduction of a current in the Calumet River as well as the Chicago River.

"*(d)* That the amount of water withdrawn from Lake Michigan, through the Chicago and Calumet Rivers together, shall not exceed the total amount of 259,000 cubic feet per minute (4,167) cubic feet per second already authorized to be withdrawn through the Chicago River alone.

"*(e)* That the permission hereby given shall be subject to such modification as in the opinion of the Secretary of War the public interests may from time to time require.

"*(f)* That this permission shall in no wise affect or in any manner be used in the friendly suit now pending in the circuit court of the United States for the northern district of Illinois brought by the United States of America against the sanitary district of Chicago, to determine the right of the said sanitary district to divert from Lake Michigan for sanitary purposes an amount of water in excess of that now being diverted without having first obtained a permit from the Secretary of War.

"*(g)* That the War Department shall have free access at all times to the water-flow records of the sanitary district of Chicago and free access also to the regulating works and all other parts of its canals for the purpose of checking records or making water-flow measurements.

"*(h)* That the plans for the proposed work shall be submitted to and approved by the Chief of Engineers and the Secretary of War.

"*(i)* That the work shall be subject to the supervision and approval of the engineer officer of the United States Army in charge of the locality.

"Very respectfully,
"Robert Shaw Oliver,
"Acting Secretary of War.

"Mr. George M. Wisner,
"Chief Engineer, Sanitary District
of Chicago,
Washington, D. C.
"Office Chief of Engineers,
"War Department, June 30, 1910."

24. None of the documents referred to in paragraph 23 hereof are or ever have been of any force or effect as constituting an authorization to the defendants, or either of them, to withdraw water from Lake Michigan in such quantities as to obstruct its navigable capacity by lowering its level, or to obstruct the navigable capacity of the Chicago River by introducing a dangerously swift current into said river. On the contrary, all of said documents purport to be issued solely under and pursuant to the authority conferred on the Secretary of War by Section 10 of the Rivers and Harbors Act of March 3, 1899, which authority is limited by said Act to the approving of alterations and modifications of the various channels and waterways therein referred to, while by the terms of said Act the power to authorize obstructions to the navigable capacity of any and all waters of the United States is wholly and exclusively reserved to and retained by Congress. But if the diversion of water in the manner hereinbefore de-

scribed be held by this honorable Court to result in a mere change in the course, location, condition or capacity of the said lake and river, and not in an obstruction to the navigable capacity thereof, so that the granting of permission for such diversion was within the power of the Secretary of War under the provisions of the said Act of March 3, 1899, then and in that case your orator asserts that at no time since the 31st day of March, 1903, have the defendants, or either of them, been authorized by the Secretary of War to divert from Lake Michigan, or to pass through the Chicago River or the Calumet River, or both, into the canal of the defendant District, more than four thousand one hundred sixty-seven (4,167) cubic feet of water per second; whereas said defendant Sanitary District of Chicago, in violation of the permits thus granted by the Secretary of War, and acting under the express command of the defendant State of Illinois as set forth in the Act of 1895 referred to in paragraph 9 hereof, has been continuously for more than ten years last past, and is now, withdrawing from Lake Michigan and passing into its said canal an amount of water greatly in excess of the said limit of four thousand, one hundred sixty seven (4,167) cubic feet per second. Ever since the 6th day of October, 1913, there has been pending in the district court of the United States for the Northern District of Illinois an action wherein the United States is plaintiff and the defendant district is defendant, the object of said action being to restrain said defendant from diverting a greater amount of

water from Lake Michigan than the amount authorized by the permits hereinbefore referred to; but although the said Court on or about the 19th day of June, 1920, announced a decision in said action favorable to the United States and against the defendant District, and further announced that a decree would be entered restraining said defendant from diverting more than 4,167 cubic feet of water per second from Lake Michigan, your orator is informed and believes and therefore avers that no such decree has ever been entered and your orator has no knowledge as to whether, or when, such decree will be entered, the judge who announced the said decision being now no longer a judge of the said court.

25. The acts of the defendants hereinbefore set forth and described, in the diverting of water from Lake Michigan into the canal of the defendant District, have never been authorized by Congress, and are in violation of the legal rights of the State of Wisconsin and the people of said State in the following respects to-wit:

(a) In that the defendants by said acts are interfering with the common-law right of said State of Wisconsin and its people to have the free and unobstructed use of Lake Michigan and the various ports and harbors thereof within the borders of said state, for purposes of navigation, trade and commerce, free from any and all interference with the natural navigable capacity of said lake or said harbors by any agency other than the State of Wisconsin or the United States Government.

(b) In that the defendants by said acts are interfering with the right of the people of Wisconsin to the free and unobstructed navigation of Lakes Michigan, Huron, Erie and Ontario, and the navigable waters between the said lakes and from said lakes into the Mississippi River and the Atlantic Ocean, which rights belong to the said people of Wisconsin both by the common law and by the express guaranty contained in the Ordinance for the Government of the Territory of the United States Northwest of the River Ohio, enacted by Congress on June 13, 1787.

(c) In that the defendants by said acts are violating the provisions of the Act of Congress of March 3, 1899, known as the Rivers and Harbors Act of 1899, and particularly the provisions of Section Ten (10) thereof.

26. The said violations of the legal rights of the State of Wisconsin and of its people have caused, are now causing, and will continue to cause so long as they are permitted to continue, serious interference with the trade and commerce of the people of Wisconsin, and of the State of Wisconsin in its proprietary capacity, resulting in large pecuniary losses to the said people and the said State which cannot be accurately estimated and for the recovery of which no adequate remedy exists at law. The State of Wisconsin therefore brings this action, on behalf of itself and of the people of said State, for the purpose of establishing and protecting the legal rights of said State and its people against the encroachments of the defendants, and of terminating a condition which

is inimical to the welfare and prosperity of the said State and of its people.

WHEREFORE, your orator prays that the defendants may be required to answer the allegations hereinbefore set forth in this bill of complaint, and that upon final hearing of this cause an injunction be issued, under the seal of this Court, restraining the defendants and each of them, and each of their officers, agents and servants, from taking or causing to be taken any water whatever from Lake Michigan in such manner as to permanently divert the same from the said lake, for the purpose of operating the canal hereinbefore referred to, until such time as the Congress of the United States shall give its valid consent to such taking and diversion of water.

But in the event that the said defendants shall, during the pendency of this action, expressly recognize and concede that the canal constructed by the defendant District is a navigable waterway of the United States and subject to the same control on the part of the United States as the other navigable waterways thereof, then and in that case your orator prays that upon the final hearing of this cause an injunction be issued, under the seal of this court, restraining the defendants and each of them, and each of their officers, agents and servants from taking or causing to be taken any water from Lake Michigan, in such manner as to permanently divert the same from the said lake, for the purpose of operating the said canal, in excess of the amount which the Court shall determine to be

reasonably required for the purpose of navigation in and through said canal, until such time as the Congress of the United States shall give its valid consent to the taking and diversion of a larger amount of water.

And in the event that this Court shall hold and determine that it is within the lawful power of the Secretary of War to permit the taking of water from the said Lake Michigan for the operation of the said canal, and to determine the amount and conditions of such taking, then and in that case your orator prays that upon the final hearing of this cause an injunction be issued, under the seal of this Court, perpetually restraining the defendants and each of them, and each of their officers, agents, and servants, from taking or causing to be taken any water from Lake Michigan, in such manner as to permanently divert the same from the said lake, for the purpose of operating the said canal, in excess of two hundred fifty thousand (250,000) cubic feet per minute, or four thousand one hundred sixty-seven (4,167) cubic feet per second, until such time as the Congress of the United States, or the Secretary of War acting upon the recommendation of the Chief of Engineers of the United States Army, shall give valid permission for the taking and diversion of a larger amount of water.

And your orator also prays for such other and further relief as to this honorable Court may seem meet and consistent with equity and good conscience.

May it please your Honors to grant unto your orator a writ of subpoena under the seal of this honorable Court, directed to the Governor and Attorney General of the defendant, the State of Illinois, and to the Sanitary District of Chicago, commanding them and each of them, on a day certain to be therein named and under a certain penalty, to be and appear in this honorable Court, then and there to answer, but not under oath (answer under oath being expressly waived) all and singular the matters and things hereinbefore set forth, and to abide such further order and decree of the Court as may be made against the said defendants or either of them.

Attorney General of the State of Wisconsin,

Deputy Attorney General of the State of Wisconsin,

Solicitors for Complainant, the State of Wisconsin.

United States of America,
State of Wisconsin,
County of Dane,
} ss.

WILLIAM J. MORGAN, being first duly sworn, on oath says that he is the duly elected, qualified and acting Attorney General of the State of Wisconsin; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true to his own knowledge except as to

the matters therein stated on information and belief, and as to such matters he believes it to be true; and that as such Attorney General he is duly authorized to pray leave to file the said bill of compiaint.

William J. Mayer

Subscribed and sworn to before me
this 26th day of May, 1922.

J. Kessenich

Notary Public in and for
Dane County, Wisconsin.

My commission expires May 13, 1923.